



THE INTERIM

A Monthly Newsletter of the Montana Legislative Branch

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THE INTERIM

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THE INTERIM is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

A Publication of **Legislative Services Division**

AMERICA'S LEGISLATORS BACK TO SCHOOL PROGRAM

Montana's Senate and House leadership invite all Montana legislators to join their counterparts throughout the nation in America's Legislators Back to School Program. This program gives lawmakers in all 50 states the opportunity to meet personally with their young constituents and to answer questions, share ideas, listen to concerns, and impart a greater understanding of the legislative process.

Sponsored by the National Conference of State Legislatures, the program is designed to teach young people -- the nation's future voters and leaders -- what it's like to be a state legislator: the processes, pressures, debate, negotiation, and compromise that are the very fabric of representative democracy. It also focuses state legislators on civic education, building personal links between schools and legislators and providing legislators an opportunity to observe what is going on in schools.

The 2005-06 program kicks off September 19-23 and runs throughout the school year. Lawmakers are encouraged to schedule a visit to their schools during the school year at any time that it is convenient.

To assist legislators in participating in Legislators Back to School Week, NCSL has prepared resource materials, including talking points about the legislature and the legislative process and suggestions for age-group appropriate activities with students. Follow-up materials produced for teachers to use in the classroom include a student booklet and video titled "Your Ideas Count." These materials, plus other assistance to Montana legislators, are available through the Legislative Services Division.

To date, about 40 Montana legislators have signed up to participate in the Back to School Program. Additional information about the program will be sent to these legislators in the upcoming months.

If you would like to participate in the program and have not yet signed up, please contact Krista Lee Evans at (406) 444-1640 or kevans@mt.gov, or Kevin Hayes at (406) 444-3067 or khayes@mt.gov.

LEGISLATIVE REFERENCE CENTER

Research Assistance at Your Fingertips...Even though session is over, don't forget about the services the legislative library can provide you during the interim. The information described below is available on the Montana Legislative Reference Center website by going to the legislative branch homepage (<http://www.leg.mt.gov>) and following the "Research" link to the library; simply click on the resource heading that interests you. You may also contact Lisa Mecklenberg Jackson, legislative librarian, at (406) 444-2957 or ljackson@mt.gov.

Books...The legislative library's book collection covers a broad range of topics of interest to the Legislature and includes publications from other states' legislatures,

the National Conference of State Legislatures (<http://www.ncsl.org>), and the Council of State Governments (<http://www.csg.org>). We add new titles each month. Legal materials such as the United States Code Annotated, West's Uniform Laws and legislative interim committee publications are also available.

Legislative Materials...The legislative library's collection includes the Montana Code Annotated (1895-), House and Senate Journals (1879-), Session Laws (1889-), papers of the 1972 Constitutional Convention, Montana legislative rule books (1925-), Lawmakers of Montana "Copper Books" (1957-), and session committee minutes (1979-).

Periodicals and Articles of Interest...The library subscribes to more than 500 periodicals that provide up-to-date information on economics and economic development, criminal justice, education finance, environmental policy, federal-state relations, health care, human services, state and local government, tax policy, and utilities. If you would like to receive the table of contents for any of these periodicals (with follow-up mailing of articles), please contact Lisa Mecklenberg Jackson.

Each month, we look through the table of contents of selected periodicals and copy articles on topics before the Montana Legislature. These are then indexed and filed according to topic and available to you.

Staff Memos...Memos written by Legislative Services Division (LSD) staff and selected memos from the Legislative Environmental Policy Office and Legislative Fiscal Division comprise an archive of past research. We have copies of all these memos in a searchable database. Just provide us with a topic of interest and we can provide you with copies of any memos already written on the subject.

Subject File...We have an extensive subject file of newspaper clippings and reports of current and historical interest. You can search online for articles dating back to 1995.

Online Catalogs...Online databases include our book catalog and periodical, newspaper, and memorandum indexes. We have access to MONTLAW, WESTLAW, and LEXIS for searching legal information as well as a number of commercial databases for locating statistical and research information held elsewhere.

Sign up for Information...If you would like copies of the indexed articles, newspaper articles, and new books compilation for the month, as well as a host of other important information, sign up for the Legislative Library Highlights list on the library website.

So, don't forget about your legislative library and don't hesitate to contact Lisa Mecklenberg Jackson for any

of your research needs during the interim.

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES

First meeting in August...The Children, Families, Health, and Human Services Committee will meet for the first time this interim on Monday, Aug. 22 at 9 a.m. in Room 137 of the state Capitol. The committee will discuss its statutory duties, which include monitoring of the Department of Public Health and Human Services and reviewing the department's administrative rules. Dr. Robert Wynia, the new director of DPHHS, will present an overview of the department's activities. Staff of the Legislative Fiscal Division will present information about the department's budget.

Two Interim Studies Assigned...The Legislative Council assigned two interim studies to the committee. Senate Joint Resolution 37 requests a study of the child protection system and Senate Joint Resolution 41 requests a study of the mental health crisis response system.

The Legislative Council requested that the committee coordinate the SJR 37 child protection study with the Law and Justice Interim Committee. Last interim, the Law and Justice Committee worked on revamping the public defender system in Montana. This committee recommended to the Law and Justice Committee that it include a provision related to appointing a public defender for indigent parents at the initiation of child abuse and neglect proceedings. Senate Bill 146 (Ch. 449, L 2005) created a new statewide public defender system that included this committee's recommendation. With much of the child protection process in the hands of county attorneys and district court judges, it is advisable to maintain the working relationship with the Law and Justice Committee that began last interim.

Staff will present a study plan for each resolution at the first meeting. The DPHHS divisions of Child and Family Services, Addictive and Mental Disorders, and Health Resources will be involved with the respective studies. Stakeholders will also be involved with each study to give the committee a broad perspective on problems and possible solutions.

Ways to Participate...Stakeholders who want to participate in the studies should contact Susan Byorth Fox at (406) 444-3597 or sfox@mt.gov. Persons who want to be on the interested persons list may subscribe for electronic notices at the committee website or contact Fong Hom at (406) 444-0502 or fhom@mt.gov to be placed on the hard copy mailing list.

LEGISLATIVE FINANCE COMMITTEE

Committee Organizes for the Interim...The Legislative Finance Committee met for the first time this interim on June 17. Meeting material is available on the Legislative Fiscal Division website by following the "Fiscal/Budget" link on the legislative branch homepage.

The committee elected officers, met jointly with the Revenue and Transportation Committee, reviewed its statutory responsibilities, and considered a work plan for the interim.

The committee elected Sen. John Cobb as chair, Rep. Rosie Buzzas as vice chair, and Sen. Carol Williams as secretary. The committee also named Rep. Rick Ripley to replace Rep. Verdell Jackson, who resigned from the committee.

The committee plans on meeting Oct. 7 and Dec. 8-9, 2005, and March 9-10, June 8-9, Oct. 12-13, and Nov. 14, 2006.

Fiscal Analyst Reports on 2005 Budget Actions...Clayton Schenck, legislative fiscal analyst, presented the **Legislative Fiscal Report, 2007 Biennium** (June 2005). The report, published in four volumes, provides detailed analysis of legislative actions during the 2005 legislative session affecting agency budgets, revenue estimates, and changes in revenue. Volume 1 provides an overview of legislative actions and has been mailed to legislators. Volume 2 presents revenue estimates, and Volumes 3 and 4 describes agency budgets. The report is also available on the LFD website or on CD. For additional information contact the LFD office at (406) 444-2986.

General Fund Revenue Update for Fiscal Year 2005...Based on collection data through the end of May 2005, total state general fund revenue for fiscal year 2005 may exceed House Joint Resolution 2 revenue estimates by \$105 million. Individual income taxes and corporation license taxes account for much of the growth. From now until July 22 significant revenue collections and accruals are recorded on the state's accounting system. That information will tell the Legislature whether total general fund revenue will exceed estimates and by how much. A full report on the financial status of the general fund for fiscal year 2005 will be available in October. If projected revenue growth materializes, the general fund could end fiscal year 2005 with a record high fund balance of \$267.4 million, instead of the previously projected \$162.4 million (**Legislative Fiscal Report, 2007 Biennium**). Other sources of revenue may be above or below the estimated amounts, but the cumulatively difference should be insignificant.

The revenue trends portray a more optimistic outlook for the future, but a thorough analysis of the "permanent" versus "one-time-only" nature of these collections must be done. Without this analysis, erroneous conclusions could easily be drawn, leading to inappropriate fiscal policy. A recent article in the Wall Street Journal ("State Budgets Get Relief With Surge in Revenues" June 14, 2005), reported that many states are experiencing

greater revenue collections than expected. Some states are spending the additional revenue as if it were ongoing revenue. This could lead to a "boom and bust" cycle similar to the "dotcom" bubble that was followed by a precipitous fall in the equity markets and ultimately a reduction in state revenues.

LFD staff will analyze revenue trends during late summer and early fall in preparation for developing revenue estimates by the Revenue and Transportation Committee in December. Ideally, staff will be able to identify the reasons for the increases in individual and corporation income taxes and how much of this potential revenue will be ongoing for the rest of the 2007 biennium. While this is the goal, the committees should be aware that the individual income tax return data for tax year 2004 will not be available until late October or early November. This means that staff will have to analyze this information in a relative short period of time to meet the needs of the Legislature for a December special session. There may be several reasons why income tax collections are exceeding estimates. However, additional data may not totally explain the current trends and data may not be available to quantify "on-going" versus "one-time only" revenue. LFD staff will be as diligent as possible to have the information the Legislature needs for the special session. For more information, contact Terry Johnson at tjohnson@mt.gov or at (406) 444-2952.

Committee to Study Performance Management Options...The Finance Committee will analyze performance management as a method for developing the legislative budget as well as for conducting legislative oversight of state government. The study may include a pilot project for four state programs.

According to LFD analyst Barb Smith, "performance management is viewed as a comprehensive system to assure that government planning, budgeting, and reporting are in direct relation to what government seeks to accomplish. It is a system to link people, process, and ownership of the job of government."

LFC members discussed the project at length and said that the benefits of performance management in state government would include:

- providing a means to receive reports and provide feedback on programs during the interim;
- using performance or accountability measures to establish the program and agency budgets;
- establishing policy regarding the analysis of new proposals; and
- creating a framework to set priorities.

The committee also said that one of the primary benefits of performance management is that it would give the Legislature the ability to raise the level of expectations of state government programs. The committee believes that

the process would improve communication between state agencies and the Legislature during the interim.

The committee identified four programs in state government as pilot projects for implementing components of performance management:

- a major information technology (IT) project in the judiciary;
- the hiring of regional investigators at the Department of Fish, Wildlife and Parks;
- the recruitment and retention of direct care staff at the Montana Veteran's Home; and
- the use of accountability measures to develop the 2009 biennium budget for the Montana university system.

Sens. Don Ryan and Rick Laible will lead the project and will work with LFD staffers Barb Smith, Lois Steinbeck, and Alan Peura. The Postsecondary Education Policy and Budget Subcommittee, a subcommittee of the Education and Local Government Interim Committee, will likely be responsible for the project component dealing with the university system. For more information about the performance management project, contact Barb Smith at (406) 444-5347 or basmith@mt.gov.

Committee Adopts Work Plan...The committee discussed the LFD interim work plan for the interim and set priorities for the proposed projects. The top projects approved by the committee are:

- an examination of expenditure limitation statutes;
- a study of the Resource Indemnity Trust and related accounts;
- an evaluation of state reliance on federal funds;
- the funding of wildland fire suppression, with a focus on cash flow;
- long-range building deferred maintenance; and
- options for establishing a rainy day fund.

These projects are in addition to other major and minor projects and duties that LFD staff routinely perform during an interim, including developing revenue estimates, analyzing the executive budget, monitoring budget implementation and funding sources, reviewing budget amendments, and, this interim, preparing for a special session.

For more information about the Finance

Committee, contact Clayton Schenck, legislative fiscal analyst, at (406) 444-2986 or cschenk@mt.gov.

QUALITY SCHOOLS COMMITTEE

Committee Selects Consultant...On June 3, the Quality Schools Interim Committee selected R.C. Wood & Associates of Gainesville, Florida, as the school finance consultant to help the committee in designing a new school funding formula. Although the firm is based in Florida, the consultants' team has three Montana members: Dr. Don Robson and Dr. Merle Farrier of the University of Montana and Joyce Silverthorne of the Confederated Salish and Kootenai Tribes. The other team members are Dr. Craig Wood, Steve Smith, and Michael Griffith.

The consultants met with the committee on June 6 and reviewed the study design contained in their proposal. R.C. Wood & Associates proposes to:

- create an inventory of educational needs in Montana;
- provide the committee with numerous funding levels for providing an adequate education based on the results of the successful school, professional judgement, evidence-based, and advanced statistical approaches to defining adequacy;
- in consultation with the committee's staff, provide recommendations and policy options for school funding formulas;
- provide detailed information on the total cost adjustments required under Senate Bill No. 152 and on each educationally relevant factor described in SB 152; and
- provide a report on the costs associated with the recruitment and retention of qualified educators and other personnel.

Committee Requests Compensation Market Analysis...Because personnel costs are such a large part of a school district's budget, the committee has requested that a qualified teacher and staff compensation market analysis be performed by the Montana university system. The committee received three proposals from the university system for the analysis. The committee met on June 24 to review the proposals and make a selection. More information on this meeting and the committee's selection will be available in the August issue of **THE INTERIM**.

Committee Meets in Late June...The committee met on June 28 in Helena. Mike Burke of the Office of Budget and Program Planning reported on "School Facilities Funding in Montana Public Schools". Staff from the Office of

Public Instruction discussed its work on Indian Education for All and the new student information system. Chris Lohse, Legislative Services Division, reviewed his work on special student populations.

R.C. Wood & Associates presented the needs assessment survey instrument for school districts and the needs assessment survey instrument for the general public. The district survey will be mailed out to every Montana school district. The public survey will be available on a quality schools website being developed by the consultant.

Dr. Craig Wood commented on the school funding proposal developed by the Joint Select Committee on Education Funding during the recently-completed legislative session. The committee then spent more time working on this funding proposal. Additional coverage of this meeting will be in the August issue of *THE INTERIM*.

Meeting Schedule... The Quality Schools Committee will meet July 21, Aug. 19, and Sept. 19 in Room 137 of the state Capitol. For more information about the committee, please contact Connie Erickson at (406) 444-3078 or cerickson@mt.gov. Information is also available on the committee's website.

REVENUE AND TRANSPORTATION COMMITTEE

Committee Organizes for the Interim... The Revenue and Transportation Committee met June 17 in Helena. The committee elected Sen. Jim Elliott as chair and Rep. Karl Waitschies as vice chair. Other committee members are Reps. Jill Cohenour, Cindy Hiner, Bob Lake, Dave McAlpin, and Penny Morgan and Sens. Greg Barkus, Jerry Black, Kim Gillan, Sam Kitzenberg, and Ken Toole. The committee met jointly with the Legislative Finance Committee (see Legislative Finance Committee, pg. 2, for coverage), heard reports from the Departments of Revenue and Transportation, and adopted a work plan and meeting schedule for the interim.

Federal Reauthorization of Transportation Funding... According to Jim Lynch, director, Montana Department of Transportation, Congress may be poised to reauthorize federal funding of state transportation programs. The Transportation Equity Act for the 21st Century expired Sept 30, 2003. Since then, the president has signed 7 extensions that provide temporary transportation funding to the states. The House of Representatives and Senate have been squabbling over funding levels, but a conference committee is working out the differences. Lynch said that Montana's congressional delegation is confident that a bill will be enacted early this summer.

The Senate version of reauthorization provides more funding overall and more to Montana in particular. Under the Senate version Montana would receive a constant share of federal funding over a 5-year period, or about \$2.1

billion. Under the House version, Montana would receive a variable share of federal funding over a 6-year period, or about \$1.8 billion. Lynch said that the Senate is holding firm to its numbers and the House not so firm. Regardless of the outcome, the state will see an increase in funding, and Lynch told the committee that the department will not have to request increases in motor fuels taxes to match federal funding.

Beartooth Highway Presents Dilemma for the State... Lynch told the committee that the department has responded quickly to reopening the Beartooth Highway, which had been blocked by landslides in May. The highway is a heavily traveled route into Yellowstone National Park. The Montana Transportation Commission authorized the department to implement emergency procedures to reopen the highway. The department put out a request for proposal to do the work. Kiewit Western of Littleton, Co, was awarded the contract. HKM Engineering and JTL Group, both of Billings, will also be working the project.

Gov. Schweitzer declared an emergency because of the closure of the highway, and the state has been allocated \$2.4 million of federal emergency relief funding to begin the work. However, that amount is well short of the estimated \$20 million or more needed to repair the highway. If the state does not receive additional emergency relief funding, the department and Transportation Commission would be faced with tough decisions on how to divert money from existing state projects. Because relying on the state's resources for repair could have statewide implications, the Revenue and Transportation Committee has written a letter to the Montana congressional delegation asking their support in obtaining emergency funding. The committee has also requested that the Wyoming Transportation Commission contact the Wyoming delegation for support.

PPL Montana and Other Property Tax Protests... PPL Montana acquired the generation assets of the former Montana Power Co. in December 1999. The company protested the Department of Revenue's valuation of the facilities for tax years 2000-2004, has paid its property taxes under protest, and appealed the valuation to the State Tax Appeal Board. Part of the protest includes PPL Montana's argument that its valuation should be comparable to the valuation of regulated utilities.

Dan Bucks, director, Department of Revenue, reported on the status of this and other property tax protests. Bucks said STAB used the purchase price as the starting value in 2000 but lowered the valuation of PPL Montana's generation facilities by 14 percent for 2001 and 2002, which resulted in an average reduction in value of 9% percent for the period 2000 through 2002. STAB supported the Department of Revenue's position that the property should be centrally assessed and ruled that the department had correctly accounted for exempt intangible property and for pollution control equipment. The reduction in value was related to STAB's decision to disregard the income approach to valuation for 2001 and 2002. STAB has not

reached a decision on 2003 and 2004.

Bucks said that the department and PPL Montana have appealed the STAB decision to district court. Bucks also reported on property tax protests of pipeline property by Montana-Dakota Utilities and Omnimex Canada. MDU has challenged valuation on the bases of classification, valuation, and equal treatment with similarly situated taxpayers, while Omnimex has challenged on the bases of classification, the department's central assessment rule, and equalization with other taxpayers.

Committee to Establish Informal Liaison with Quality Schools Committee... Because of the revenue implications associated with any new school funding proposal, the committee appointed Rep. Bob Lake and Sen. Kim Gillan to attend the meetings of the Quality Schools Committee. Lake and Gillan will report on the conclusions and recommendations of the Quality Schools Committee. That information will be important for this committee as it considers adopting revenue estimates for the December special session and discusses possible sources of revenue for school funding.

Busy Interim Ahead for the Committee... The committee adopted a work plan and meeting schedule for the interim. In addition to its monitoring functions of the Departments of Revenue and Transportation, the committee will conduct a study of the classification, valuation, and taxation of agricultural land (HJR 43) and a study of the assessment and property taxation of oil and natural gas property (HJR 44). Committee staff will be working with the Department of Revenue during the summer to coordinate the committee's study with the reappraisal program of the department in cooperation with the agricultural advisory committee. A study plan for each study will be presented at the Sept. 30 meeting.

Based on a staff recommendation to review a major tax source each interim, the committee will look at a variety of topics related to the corporation income tax and other business entity income taxes. The committee is also scheduled to revisit the Legislature's revenue estimates in anticipation of the December special session dealing with school funding.

The Loop is Still Open... Interested parties are reminded that they can sign up for electronic notification of committee meetings, agendas, staff reports, and other information by going to the committee's website and following the link to the email subscription page. As always, hard copies of meeting agendas will be mailed to people who prefer that method.

The committee work plan, meeting schedule, and a summary of tax and fee legislation enacted during the 2005 legislative session are available on the committee's website.

For more information about the committee, please contact Jeff Martin, committee staff at (406) 444-3595 or jmartin@mt.gov, or Dawn Field, committee secretary, at (406) 444-3073 or dfield@mt.gov. Lee Heiman is the staff

attorney and may be reached at (406) 444-4022 or lheiman@mt.gov.

ECONOMIC AFFAIRS COMMITTEE

Survey Planned for Licensing Board Study... The Senate Joint Resolution 35 study of licensing boards, assigned to the Economic Affairs Committee, will include an on-line or paper survey of anyone who is licensed by a professional or occupational board in Montana or who would like to see the creation of a new licensing board. The survey is also intended for lobbyists that represent a board, profession, or occupation and for other interested persons, including staff of departments to which boards are attached administratively. For people interested in creating a new board, the survey will ask pertinent questions.

The survey will be posted on the Economic Affairs Committee website (under "Assigned Studies, SJR 35") after the committee has reviewed and approved the survey format. Those who prefer a paper copy can contact Pat Murdo, committee staff, at (406) 444-3594 or Dawn Field at (406) 444-307. Responses to the survey will be due by the end of August and will be presented at the committee's next meeting, scheduled for September.

LAW AND JUSTICE COMMITTEE

Committee Responsibilities... The Law and Justice Interim Committee is responsible for conducting rule review, program evaluation, and monitoring of the Judicial Branch, the Department of Justice, and the Department of Corrections. The Legislative Council assigned three interim studies to the committee:

- Senate Joint Resolution 6, requesting a study of legal services for moderate and low income Montanans;
- Senate Joint Resolution 40, requesting a study of county attorney services; and
- Senate Joint Resolution 15, requesting a study of sentencing equity (i.e., whether and to what extent there are sentencing disparities related to the ethnicity of the defendant).

The Legislative Council also requested that the committee work closely with the Children, Families, Health and Human Services Interim Committee on its HJR 37 study of child protective services (see pg. 2 for related coverage).

Organizational Meeting in July... The committee will conduct its first meeting of the interim on July 26. The agenda for the meeting will include:

- the election a presiding officers;
- presentations from representatives of the judicial branch and executive branch agencies for which the committee has monitoring responsibilities, including the Department of Justice, the Office of Appellate Defender and the Public Defender Commission¹, and the Department of Corrections;
- public comment on matters under the LJIC's jurisdiction (e.g., matters related the judicial system, the correctional system, and law enforcement); and
- review and adoption of an interim work plan.

Want More Information?...Persons who want to receive notification of committee meetings, agendas, reports, and other information are encouraged to subscribe to our email list by going to the committee's website and following the link to the email subscription page.

Other information, such as committee membership, the meeting schedule, latest activities, and staff reports are also available on the committee website

If you would rather receive meeting notices by regular mail, contact the Legislative Services Division at (406) 444-3064. For more information about the committee, contact Sheri Heffelfinger at (406) 444-3596 or sheffelfinger@mt.gov.

EDUCATION AND LOCAL GOVERNMENT COMMITTEE

July 15 Meeting Scheduled...The Education and Local Government Interim Committee will hold its first meeting of the 2005-06 interim on Friday, July 15 in Room 137 of the Capitol. The committee, scheduled to begin at 10 a.m., will organize its interim activities, establish priorities for its assignments, and gather information on local government and education-related subjects that members may monitor during the interim. An agenda will be posted on the committee's website and mailed to interested persons during the first week of July. For more information about the committee or the upcoming meeting, contact Leanne Kurtz, committee staff, at (406) 444-3593 or by email at

¹ The Appellate Defender Commission and Office and the newly formed Public Defender Commission and Office are attached to the Department of Administration. The State Administration and Veterans' Affairs Interim Committee is technically responsible for monitoring the Department of Administration and its attached agencies. However, the LJIC requested the legislation (SB 146) that created the statewide public defender system and is the interim committee with responsibility for monitoring the implementation of public policy affecting legal representation. Therefore, the LJIC will have monitoring functions for the Appellate Defender Commission and Office and the Public Defender Commission and Office.

lekurtz@mt.gov.

ENERGY AND TELECOMMUNICATIONS COMMITTEE

Committee Elects Officers, Adopts Work Plan...The Energy and Telecommunications Interim Committee held its first meeting of the interim June 20-21 at the city council chambers in Roundup. The committee elected Sen. Glenn Roush as chair and Rep. Alan Olson as vice chair. Other committee members include Reps. Robyn Driscoll, Harry Klock, and Gary Matthews and Sens. Jeff Essmann, Dave Lewis, and Greg Lind.

The committee also discussed and tentatively adopted its work plan and meeting schedule for the interim. The committee has administrative rule review, draft legislation review, and monitoring functions for public service regulation. In addition to its statutory duties, the committee will develop policies on two energy study resolutions passed by the 2005 Legislature. Senate Joint Resolution 36 requested a study of the potential for distributed energy generation in Montana, and SJR 39 requested a study of the feasibility of a planning and coordinating entity for energy policy in Montana. The committee will also examine the major bottlenecks associated with Montana's energy transmission systems.

The Public Service Commission, the Southern Montana Electric Generation and Transmission Cooperative, and Rocky Mountain Ethanol of Hardin reported on energy development and other issues. The committee also discussed PPL Montana's market-based rate authority. Members finished the two-day meeting with a tour of the Bull Mountain coal mine near Roundup.

For more information about the Energy and Telecommunications Committee contact Casey Barrs at (406) 444-3957 or cbarrs@mt.gov.

TIME AND TIDE

(Tempus fugit)	
<u>Event</u>	<u>Days remaining</u>
Special session (Dec. xx, 2005)	±166
Date for completion of interim committee work (Sept. 15, 2006)	442
General election (Nov. 7, 2006)	495
60th Legislature convenes (Jan. 3, 2007)	552

THE BACK PAGE

EYES ARE THE PRIZE

The Struggle to Reach and Connect With Citizens Through Digital Media

By Stephen Maly¹
Helena Community Television

ROD SERLING HAD IT EASY

You are about to enter the twilight zone of amorphous facts and figures, arcane jargon, and the usual splash of acronyms. It won't take me long to reach the outer limits of my confidence as a digital media analyst; there's a lot about the fast-changing technologies and political economy of digital media that I don't quite fathom yet. You'll see what I mean soon enough.

What is the digital media? There's no easy description, but the phrase encompasses a huge and diverse array of electronic devices that transmit or receive all kinds of digital information. I'm talking about large, expensive television sets, PCs, laptop computers, cell phones, super-mobile handheld minicomputers, Ipods, and other small thingamajigs that download music and stuff from space, all of which enable consumers to tune into myriad sources of news, weather, stock reports, sports, electronic games, email, web pages, and bloggers. This information travels across wires and cables and through the ether as encoded bits and bytes that are decoded on arrival at the digital device.

What the vendors of the video portions of this digital content want more than anything is your eyes, which sooner or later will help trigger a decision to let go of what's in your wallet. Increasingly, the firms who build and sell the content are the same ones who convey it to "market" by a variety of electronic means. The combination of media consolidation and ongoing efforts to deregulate the telecommunications industry could lead to a situation in which just a few corporate giants exercise extraordinary market power. That's the fear; the hope is that fierce competition for our eyes even among a few behemoths will bring lower prices, more choices, one simple bill.

The digital media is undergoing a great transformation in

¹Stephen Maly is a former legislative research analyst with the Legislative Services Division. He still frequents the hallways and hearing rooms of the state Capitol because of his deep respect for the citizen legislature as an institution in our federalist system. He is committed to the notion that the best way to bolster respect for state laws and the people who make them, and to increase public understanding of the procedures by which the laws are implemented by agencies and reviewed by the courts, is to put the whole, unadulterated process on television.

technology, audience demographics, and federal legislation. What follows is a discussion of those changes and what the transformation may mean for Montana, particularly for public, educational, and governmental TV stations such as Helena Civic Television.

MARKET TURMOIL

The national market for digital media is in turmoil. Television audiences are fragmenting and the electronic means of consuming programming of all sorts are more diversified. Public television stations as well as commercial networks are grasping for new business models to sustain themselves as demographic and technological trends signal significant losses in market share. Younger people are migrating away from television, older people are searching in vain for something worthwhile on the hundreds of channels available on cable and satellite. Lots of viewers are purchasing personal video recorders, which can be used to record programs off the air or cable for viewing at any time. This technology allows viewers to avoid commercials altogether. Networks like ABC, CBS, NBC and Fox are worried that the value of Over-the-air advertising is declining.

Congress and the Federal Communications Commission have mandated a transition to digital television The Telecommunications Act of 1996 awarded generous slices of the digital spectrum to private and public broadcasters at no charge, and in 1997 the FCC provided that every Over-the-air television broadcaster could begin broadcasting a digital signal while simultaneously transmitting its programming over the old analog frequency. The government intends to shut off all OTA broadcasts in the analog spectrum soon, and then auction it off to private entities. By December 31, 2006, TV stations are supposed to give up their analog channels and broadcast exclusively digital signals. However, a broadcaster cannot be compelled to surrender its analog frequencies until 85 percent of the TV households in its market area are capable of watching digital television.

The market is way behind the mandate. According to a Wall Street Journal article by Jon Hart and Jim Burger last Feb. 18, an additional 90 million digital TV sets (or set-top converters) need to be in place before the 85 percent penetration rate can be achieved. A bill sponsored by the House Commerce Committee Chairman Joe Barton (R-TX) calls for analog TV signals to end Dec. 31, 2008. A similar bill is in the works by Sen. Ted Stevens (R-AK). Both bills are presumed to include substantial subsidies for consumer purchases of digital converters; otherwise the conversion process could drag on for many years. Industry analysts view the analog shut-down as a looming political disaster, since the public is generally in the dark about the purpose and pace of the conversion, and will be shocked when they turn on their ordinary television sets and see nothing.

COMPETITION AND GOVERNMENT

Local, hard-line telephone business is shrinking as more

and more people gravitate to cell phones, leading the major telecommunications service providers to invest more resources in DSL, video, and other services to recapture market share. Meanwhile, cable companies are ramping up their capacity to provide voice over the Internet telephony, video on demand, and an assortment of broadband services to their customers over fiber optic and hybrid fiber/coaxial systems. A battle of titanic proportions is brewing in Washington, D.C., and in many states as well.

Some large phone companies ("Telcos" such as Verizon and SBC Communications) are attempting to persuade state legislatures to allow them to offer television services without having to negotiate franchise contracts with local governments. They want instead to acquire a single, statewide franchise, which could streamline the paperwork process and drastically reduce the time it would take to roll out service to a particular community. Recently defeated in Texas, some Telcos are taking their cause to Congress, seeking a federal preemption that would disallow local franchising altogether. Sen. John Ensign (R-Nevada) is working with Sen. Stevens to introduce a comprehensive rewrite of the Telecommunications Act of 1996 as soon as this summer that would permit Telcos to secure nationwide franchises in lieu of securing tens of thousands of local licenses or statewide agreements.

Cable companies oppose this approach because, in their view, it would grant unfair advantage to the telephone companies, unless the rules in the Telecommunications Act are changed. Without that change, cable providers would still be required to negotiate local franchises and provide public access TV channels and free connections to government buildings, while their Telco competitors would not have to do any of this.

Community access television stations could face extinction if changes to Telecommunications Act and regulatory decisions of the FCC eliminate the requirement for local franchising. Because most community access stations rely heavily on contracts with local governments that are financed by allocations of the fees, and are generally prohibited from doing business as commercial entities (most would not and could not afford to do so in any event), only a fresh and robust regulatory regime would preserve the financial integrity of the community access sector.

The FCC is facing a firestorm of criticism over its rules governing media concentration. These rules currently allow media conglomerates to own up to 3 TV stations, 8 radio stations, the daily newspaper, the cable system and the major Internet Service Provider in a single community—not counting a DBS service such as the Rupert Murdoch-owned DirecTV. The FCC is winning cases on other fronts. On June 27, the U.S. Supreme Court overturned an Appeals Court ruling and agreed with the FCC that broadband cable operators are exempt from mandatory common-carrier regulations that still apply to Telcos. This will add fuel to

already fiery debates about regulatory parity.

The Public Broadcasting Service and the Corporation for Public Broadcasting are being threatened with severe budget cuts, ostensibly because of the belief that the system has succumbed to political bias and lacks appropriate ideological balance in its program offerings. I won't get into that here, except to say that opinion polls indicate that the general public places greater trust in PBS and National Public Radio programming than in the commercial TV networks. Meanwhile, Montana PBS and many other affiliates successfully lobbied for state government support and have met the conversion deadline set for public broadcasters. They are poised to deliver digital multicasts during the daytime hours and High Definition offerings at night, but so far owners of digital sets or converters are few and far between, and affordable programming offerings are in short supply.

THE SIGNIFICANCE

Why is all this happening, and does it really matter? The answers are a little fuzzy, and somewhat contradictory. The conversion to digital television was driven initially by a concern among federal trade policy officials that Japan would once again dominate the global market for a highly desirable technology. The logic shifted dramatically following the tragedy of Sept. 11, when it became evident that large chunks of digital spectrum ought to be dedicated to public safety and homeland security applications. Coupled with that was the desire to find some means to offset the staggering growth in the federal deficit, and some officials figured that auctioning off the analog spectrum could yield a hundred billion dollars or more. Some experts are skeptical about the real cash value of unleashed megahertz, for technical as well as commercial reasons, and the head of a California-based think tank recently characterized the conversion to DTV as a technological change in search of a rationale.

The looming battles between cable companies and Telcos and the likely changes to telecommunications laws bring to mind the distinction between the values of citizens in a democratic republic (codified in such things as free speech and the obligations of broadcasters to serve the public interest) and values derived from commercial interests and consumer tastes. On the one hand, the efficiencies associated with bundled services ought to bring some relief to consumers who currently pay separate bills to phone companies, cable companies, ISPs, and the like. On the other hand, the increasing concentration of ownership and control of digital media does not bode well for independent producers, community-sponsored programming, and the free expression of ideas and ideals, let alone prices. (Since 1996, when Congress deregulated cable television to stimulate competition and lower prices, subscriber costs for substantially comparable services (not the new array of pay-per-view and digital music and all that) have gone up at three times the rate of inflation.)

The awarding of analog and now digital spectrum to broadcasters has always been couched in terms of public interest obligations. The Communication Act of 1934 requires the FCC and broadcast licensees to promote the “public interest, convenience, and necessity.” The federal government has allowed the nation’s broadcasters to use at no cost the enormous power of the publicly owned analog and digital spectrum that is estimated to be worth hundreds of billions of dollars. However, a study conducted by the Media Policy Program of the Campaign Legal Center entitled *Broken Promises: How Digital Broadcasters are Failing to Serve the Public Interest* found that only 0.3 percent of digital programming focused on local public affairs, less than 5 percent of programming is aired in High Definition (HD), and that 98 percent of the HD content is entertainment-oriented. So far, it seems, the giveaway has failed to net benefits of the sort envisioned at the outset of the television age. At the same time, commercial broadcasters and cable operators point out that they have invested billions in infrastructure and programming and that consumers have been and continue to be well served.

BACKING UP TO BASIC CABLE

Let's pause and rewind to the status quo as it applies to a single, tiny, noncommercial entity, Helena Civic Television, which provides television and related Internet broadcasting services (aka TVMT programming) to the state of Montana. This will be old hat to some veteran legislators and lobbyists, but I hope it's a useful reminder of what we do and how we do it for those folks, and a sensible primer for everyone else. The destiny of HCTV and TVMT programming is tied to trends and events in the digital media marketplace that in turn is being shaped by federal laws, federal regulations, and the efforts of powerful lobbyists in Washington and in many state capitals to change the policy framework for digital media in fairly drastic ways.

Helena Civic Television is a nonprofit, membership-based community access station that contracts with the City of Helena and Lewis & Clark County to make and distribute public, educational, and governmental (PEG) programs to local residents on cable channel 11. While there are hundreds of PEG stations across the country—some large, most not—there are only two others in Montana: MCAT in Missoula and Community 7 in Billings. In communities where local citizens formulate and activate a PEG, cable companies such as Bresnan Communications are required by the terms of franchise agreements to provide at least one channel in the basic (least expensive) tier of services on offer to local customers and to pay franchise fees to the local government franchise authority amounting to 5 percent of the company’s gross revenues in the relevant service territory.

The Telecommunications Act authorizes (but does not require) local franchising. While the franchise fee is intended to provide a mechanism for establishing and

sustaining PEGs, local governments have discretion to spend the franchise fee revenues as they will. (This tracks back to a pre-franchise era when cities and counties charged a per-capita right of way fee; in essence franchise fees are rent paid to local governments for the use of public property.) Most local governments divert the fees to the general fund. In about 10-15 percent of cases where franchise fees are collected, at least a portion of the money is allocated to support community access media.

Cable companies have never been fond of PEGs, many of which produce a lot of poorly made and controversial programming. Moreover, the cable industry has been fighting the FCC and Congress for years, arguing that the franchise arrangements are a burden and unfairly discriminate against cable in its competition with satellite providers and, increasingly, telephone companies. At the same time, however, the cable industry is quick to claim credit, as evidenced by recent statements from the National Cable Television Association proclaiming the provision of over \$2.4 billion in franchise fees to local communities last year. This is somewhat disingenuous, in that the \$2.4 billion is derived directly from cable customers, not the cable company. The franchise fee is billed to the customer; it does not directly affect the cable operator's bottom line. This is also true of the capital contributions (for television production equipment) that some franchise agreements require to facilitate the start-up and ongoing operation of PEG stations; it's the cable customer and not the company, or the taxpayer, who foots the bill.

TVMT (Television Montana) is a stream of public affairs television programming produced by HCTV under contract to the Legislative Services Division. HCTV provides unedited, gavel-to-gavel coverage of legislative committee meetings, House and Senate floor sessions, and a variety of other state government proceedings on a year-round basis to cable subscribers in the Helena area. Because we can cover 3-4 events simultaneously, they are shown on a multi-channel, closed circuit television system inside the state Capitol. In addition, HCTV works with LSD’s information technology staff to audio-stream up to 8 simultaneous committee hearings live to the Internet, and also archives these electronic files as audio committee minutes. House and Senate floor sessions are also video-streamed to schools across the state via a connection to the Office of Public Instruction web server.

All of this is fairly complicated stuff, and has been since the beginning. Things don’t always run smoothly: computers crash, cables corrode, tape decks go blotchy, monitors fade, microphone mixers get mixed-up signals, and cameras and their remote control devices sometimes go haywire. On occasion, the camera operators themselves miss a beat. Still, the Capitol plant and equipment have performed remarkably well, as has the HCTV production crew (if I may be so bold), and we are consolidating as well as adding new components into the basement of the Capitol. These system

improvements will allow for nearly comprehensive coverage of proceedings on the first, third, and fourth floors of the Capitol, and a continuous live feed to HCTV's cable channel 11. Still, in light of the enabling legislation that guides our contract with the state, not to mention our strong desire to provide statewide service, the current situation still won't cut it: TVMT programming needs to be available to Montana citizens wherever they live, at times that are convenient to them.

During the latter half of the 2005 legislative session, HCTV used new equipment to share the same live television stream of TVMT programming with our “sister” PEG stations in Missoula and Billings. We aim to build on the success of that experiment and use similar technology to transmit programming to other communities as well, including Great Falls, Bozeman, Butte, Kalispell, Havre, and smaller towns in northcentral and eastern Montana, provided that Bresnan, local governments, and various telephone companies and cooperatives are willing to contribute resources to this venture.

This exciting enterprise may be at risk. Removing local governments’ ability to charge franchise fees to cable operators will put PEGs out of business, almost overnight. More positively, the fact that HCTV is producing valuable, taxpayer-financed (and extraordinarily inexpensive) public affairs television makes the TVMT programming attractive to Montana PBS as well as commercial network affiliates in the state who are looking for popular and affordable content to fill the void of multiple digital channels. We are adding competitive value and public interest value to local cable, and could do likewise on a broader basis, over the air, over the Internet, even via satellite. The situation is ripe for creative, mutually beneficial partnerships and creative financing structures.

Regardless of the many prospective changes in the legal landscape of digital media, my hope is that private providers of digital transmission services (fiber optic, copper wire, coaxial cable, and wireless) will partner with the state and contractors such as HCTV to ensure that TVMT programming reaches all citizens of Montana, so that they can continue to watch and listen to their elected officials and do not have to rely on TV and radio sound bites and limited column inches in newspapers. In the months ahead, HCTV will seek the guidance and assistance of legislative as well as local government leaders to have at least one meeting with representatives from Bresnan, Qwest, VisionNet, the Montana Broadcasters Association, Montana PBS, MACO, the League of Cities and Towns as well as potential programming underwriters in the private sector to sort out a plan and build a cost-effective consortium for the public good.

SIDEBAR

Key Words in the Lexicon of Digital Media

Convergence: Cable TV companies and large phone companies are vying to become sole suppliers of bundled voice, video, Internet, and other telecommunication services to households, businesses, and government agencies across the country. The objective is to provide one source to meet a consumer’s total telecommunication needs. In the near future, electrical utilities may add another dimension to the competition through the deployment of power line technology, which allows digital data and electrons to travel together through transmission and local distribution lines.

Consolidation: Over the past decade, there has been a marked increase in the concentration of ownership in the media industry. Five companies own the broadcast networks, control 90 percent of the top 50 cable systems, produce three quarters of all prime time programming, and control 70 percent of the prime time television market share. HR 2359, a bill introduced May 12 by Rep. Diane Watson (D-CA), asserts that “the drastic media consolidation has greatly diminished the television broadcast licensee’s performance of public interest obligation and its ability to foster diversity, competition, and localism in the media market.” Cable giants such as Comcast and Time-Warner and giant telecommunication companies such as SBC and Verizon and Qwest and other “baby Bells” dominate national and local markets alike. The ten largest cable operators serve about 85% of all cable subscribers, and Comcast alone (following its acquisition of AT&T) commands a third of the total.

Conversion: In 1996, the FCC approved the standard for a new era of digital television, and, with Congressional approval, awarded large swaths of digital spectrum to broadcasters at no charge in order to entice them to convert from traditional analog to digital transmission. Digital Television improves picture and audio quality, especially when broadcasting in High Definition. It also allows for multi-casting, whereby the broadcaster can deliver four or more simultaneous program streams in the standard definition mode. DTV also allows for the high-speed delivery of data, such as maps, reading lists, background material, teachers’ guides and other information that can greatly enhance the educational value of television programs. The deadline for conversion was initially set for 2003 for public TV stations and 2006 for commercial stations. The shut-down date for analog channels has been moved, owing to conditions in the market, and remains somewhat nebulous.

Broadband: This is the catch-all term for high-speed Internet connectivity, available via DSL phone lines, cable modems and hookups, satellite, and various wireless systems. The availability of broadband is considered essential to business success and overall economic development in the rapidly globalizing economy. In 2004 President Bush called for “universal, affordable access for

broadband technology by the year 2007”, but since that time the country has slipped from 10th place in the world for broadband penetration to 16th, well behind Japan, Korea, and other industrialized countries in terms of price, speed, and availability. Interestingly, large telecommunication companies such as SBC and Verizon are pushing measures in Congress that would take away the right of cities and towns across the country to provide citizens with universal, low-cost access to broadband services. Rep. Pete Sessions (R-TX), a former telephone company executive, has introduced a bill (HR 2726) that would prohibit local governments from offering telecommunications, information, or cable services except to remedy “market failures” by

private companies to provide such services. The bill includes a grandfather provision, so proactive communities such as Tacoma, Tempe, Denver, and Philadelphia would be exempt. Sens. John McCain (R-AZ) and Frank Lautenberg (D-NJ) are launching the Community Broadband Act of 2005, which would explicitly permit municipalities to offer low-cost services. Broadband is increasingly plentiful in dense urban areas, but still hard to get in most rural parts of the country (and world). Critics of media convergence and consolidation point to the predilection of corporate giants to “cherry pick” affluent customers in cities and put smaller, lower income neighborhoods and communities way down on the list of potential customers for high speed services.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
July 2005						2
3	4	5	6	7	8	9
10	11	12	13	14	15 Education and Local Government Committee, Room 137, 10 a.m.	16
17	18	19	20	21 Quality Schools Committee, Room 137	22	23
24	25	26 Law and Justice Committee, Room 102, 8:30 a.m.	27	28	29	30
31						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
August 2005						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19 Quality Schools Committee, Room 137	20
21	22 Children, Families, Health and Human Services Committee, Room 137, 9 a.m.	23	24	25	26	27
28	29	30	31			

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